

ECOSOC Humanitarian Affairs Segment 2006

Panel - “Addressing Gender-based violence in Humanitarian Emergencies”

“Gender-based violence and the role of the UN and its Member States”

Humanitarian emergencies come in a variety of different forms, whether generated by natural disaster, armed conflict, or other means. These are times characterized by large population displacement, food shortages, and collapse of public infrastructure, including health services. “Gender-based violence” is particularly prevalent during humanitarian emergencies when civilian populations are especially vulnerable. During conflict, it is commonly used as a deliberate tactic of war to destabilize populations, destroy community bonds and humiliate victims and their families. In the aftermath of armed conflicts, and in the devastation caused by natural disasters, gender-based violence is also prevalent in a variety of forms, including that of human trafficking, in situations where mass displacement disrupts government and community structures, institutions of law and order are challenged, and poverty is rife.

In responding to such crises, it is the role of the UN and its Member States to take effective measures both to ensure that there is accountability for such crimes (and that they are effectively investigated and prosecuted), and to prevent their occurrence in the future. In its landmark Resolution 1325 of October 2000 on “Women, Peace and Security”, the Security Council specifically addressed the impact of armed conflict on women and made a series of recommendations to the UN and Member States with respect to preventing and addressing gender based

violence both during and after conflicts. The Security Council reaffirmed the need to fully implement international humanitarian and human rights law, and urged Member States to increase representation of women at all decision-making levels for the prevention, management and resolution of conflict. Today I will give you a brief overview of the applicable international legal frameworks to address such violence, first in situations of armed conflict, and second, in other situations, and will examine how the UN and Member States can work to strengthen their ability to respond effectively to these kinds of crimes.

I think that it is useful if I briefly define “gender-based violence”. The Committee on the Elimination of Discrimination against Women (CEDAW), in its General Recommendation 19, defined gender-based violence as “violence that is directed against a woman because she is a woman, or that affects women disproportionately”. The United Nations Declaration on the Elimination of Violence against Women has defined “gender-based violence” as an act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life”. A more recent approach has defined “gender based violence” as “any harmful act that is perpetrated against a person’s will and that is based on *socially associated* differences between males and females”. As such violence is based on socially

ascribed differences, gender-based violence includes, but is not limited to sexual violence. While women and girls of all ages make up the majority of the victims, men and boys are also both direct and indirect victims. It is clear that the effects of such violence are both physical and psychological, and have long term detrimental consequences for both the survivors and their communities.

Armed conflict

Armed conflict causes massive and complex humanitarian emergencies. Today armed conflicts are predominantly intra-state in nature, in which opposing parties increasingly direct violence against civilian populations as a deliberate tactic of war. The most widespread type of gender-based violence is of a sexual nature. Rape, in particular, has been increasingly used as an organized and systematic weapon of war. The purposes range widely from intimidation and humiliation, to exerting political terror, and ethnic cleansing. When considering the cultural norms of the societies of many of the victims, the cruelty is compounded by the social effects both on the victims themselves, and in their relationships within their communities. Although such violence is perpetrated against women, it is often aimed at destroying entire communities.

With respect to what laws apply during armed conflict, the applicable law is international humanitarian law and human rights law, and it applies in respect of

both international and non-international armed conflicts. International humanitarian law is of course the “*lex specialis*”, however human rights law continues to apply, with the exception of certain provisions. International humanitarian law establishes the fundamental principle of distinction, according to which civilians may not be the object of attack, and provides specific protections for women and girls.

Although sufficient laws exist to criminalize forms of gender-based violence in times of armed conflict, these are powerless to protect and deter if they are not implemented and enforced. In order to be enforced effectively, Member States must ensure that they have the capacity within their national systems to respond appropriately. This means criminalization of such crimes and having the capacity to investigate and prosecute. It also involves providing support to survivors who may face difficulty in reporting such crimes because of associated social stigmas, and fear of reprisals. Prevention is equally important. Refugee camps and settlements for internally displaced persons must be designed taking into account the particular needs and vulnerabilities of women and girls.

Ending gender-based violence is the primary responsibility of States. At the same time, however, the international community has an important role to play in terms of highlighting such crimes and addressing the impunity which such crimes

have traditionally enjoyed. Throughout history, women have commonly been targeted as victims of sexual assault during times of armed conflict, yet the perpetrators of these crimes have rarely been prosecuted, and all too often these acts have been considered as a natural consequence of war. Until relatively recently, gender-based crimes have been largely ignored by Member States and the international community. They have been characterized as “outrages upon personal dignity”, as “humiliating and degrading treatment”, or as “attacks against honour”. Despite considerable development of IHL over the past century, little attention was paid to gender-based violence until the early 1990’s when the mass rapes and sexual violence in the former Yugoslavia, and later in Rwanda, became known to the world.

Since the establishment of the **International Criminal Tribunal for the Former Yugoslavia** in 1993 and the **International Criminal Tribunal for Rwanda** in 1994, the international community has made significant progress in terms of establishing international courts and developing jurisprudence concerning gender-based violence during times of armed conflict. The statutes of the ICTY and ICTR are significant in that they specifically include “rape” as a possible element of the “crime against humanity”. The Statute of the ICTR also specifically criminalizes as violations of Common Article 3 of the Geneva Conventions (which applies in respect of *non-international armed conflicts*) “rape, enforced prostitution

and any form of indecent assault”. These are included in addition to offences of “outrages upon personal dignity, in particular humiliating and degrading treatment”, which is the wording of Common Article 3.

A number of landmark cases should be mentioned in this context. In the **ICTR**, the *Akayesu* case of September 1998, was the first time an international court punished sexual violence in a civil war; and the first time that rape was found to be an act of “genocide” when it was committed with the intent to destroy a particular group. The prosecution of *Kunarac, Kovac and Vukovic* before the **ICTY** in February 2001, marked the first time in history that an international tribunal had indicted individuals solely for crimes of sexual violence against women. The Statute of the **Special Court for Sierra Leone** (established in 2002) also marks a development by explicitly expanding the categories of gender-based violence falling within the definition of “crimes against humanity” beyond that of rape, to include also “sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence” (Article 2 (g)).

While the **ICTY** and **ICTR**, and the **Special Court for Sierra Leone** were each established to deal with specific conflicts, and are limited as to their respective temporal jurisdictions, the **International Criminal Court (ICC)**, whose statute was adopted in 1998, was created to try crimes of “genocide”, “crimes against humanity” and “war crimes” committed after 1 July 2002. The **Statute of**

the ICC was groundbreaking in terms of criminalizing a number of specific forms of sexual violence as constituting “crimes against humanity” and “war crimes”, and these are set out under Articles 7 and 8 of the Rome Statute. Definitions of “crimes against humanity” and “war crimes” include rape, sexual slavery - including the trafficking of women, enforced prostitution, forced pregnancy, enforced sterilization, other forms of grave sexual violence and persecution on account of gender.

The Rome Statute also represents increasing recognition of the need to ensure that victims will feel that they are able to report such crimes; that such crimes will be investigated appropriately and with sensitivity; and that investigators, judges and prosecutors have the necessary expertise to deal with such crimes. The ICC specifically provides for the participation of women as judges and prosecutors; the employment of individuals with special expertise in investigating sexual and gender violence; and for special protective measures for victims and witnesses of sexual violence when giving evidence.

While significant developments have been made with respect to ending impunity for gender-based crimes, much of this progress is largely symbolic for the many thousands who have suffered without any form of redress. In order to fight impunity effectively, it falls upon Member States to ensure that their national laws

and criminal justice mechanisms are adequate to address such crimes. It is for Governments to take steps to acknowledge the scope of the problem, and to take efforts to review, strengthen and enforce effective legal, judicial and community mechanisms that recognize, report and punish such acts as crimes, and to ensure appropriate protection and support to survivors.

The International Criminal Court is intended to be complementary to national jurisdictions, which retain primary responsibility. Its jurisdiction is triggered in a number of ways, and in order for the ICC to prosecute a matter, the State which has jurisdiction over the matter must be “unwilling or unable genuinely to carry out the investigation and prosecution” (Article 17). Hopefully States parties to the Rome Statute will ensure that their legislation is in full conformity with the standards set by the Statute.

Other humanitarian emergencies

The legal framework which applies during humanitarian emergencies caused by natural disasters, and in periods following armed conflicts, is provided by **human rights** law. Such settings are again typically characterized by large population displacement, food shortages, and extreme vulnerability of civilians, and may lead to extended periods of chronic economic and social instability, where civilians, and in particular women, remain vulnerable. The challenges for the

international community and Member States to respond to these crises are complex, and again, national and local authorities bear primary responsibility in terms of assisting and protecting people displaced within their borders.

Although certain provisions of human rights law may be derogable in times of emergency, fundamental protections are not. Article 4 of the **International Covenant on Civil and Political Rights** (ICCPR) specifies the provisions which must be respected at all times, and these include, *inter alia*, the prohibition of torture or cruel, inhumane or degrading treatment or punishment, and the prohibition of slavery, the slave trade and servitude. Further, measures derogating from the ICCPR must not involve discrimination on grounds of race, colour, sex, language, religion or social origin.

There are a broad range of international legal instruments which establish standards and mechanisms for Governments to address forms of gender-based violence. Of these, I wish to draw particular attention to a host of both international and regional instruments designed to prevent and punish the trafficking of women and children for the purposes of prostitution. These require States parties to take effective measures to prevent the trafficking and exploitation of prostitution in women and children, and to take measures to promote physical and psychological recovery and re-integration into communities. These include the

1979 Convention on the Elimination of all Forms of Discrimination against Women; the 1989 UN Convention on the Rights of the Child; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; and the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

Many international agreements recommend that Governments review their laws from time to time in order to ensure that they are as effective as possible in preventing violence and discrimination against women, and in providing protection and support. Legislation is extremely important as it both provides the means to address gender-based violence and to promote understanding that such crimes are a matter of public concern, rather than a purely private matter. Legislation may need to be revised in order to ensure that such crimes are targeted effectively, that gaps are eliminated, that the rights of victims are protected, and that there are sufficient means to enforce such laws. Laws must also include appropriate protection and support measures for victims, and to ensure proper training for public officers such as police, the judiciary and health workers.